IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.125 OF 1998

Ganapati Laxman Babar
R/o Sutar Plots, Kolhapur Road,
Sangli ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri K.S.Patil, adv. for the Applicant.
Smt.M.H.Mhatre, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 22nd February, 2007.

ORAL JUDGMENT:

1. Ganpat Laxman Babar, who is the original accused no.1, was convicted for the offence punishable under section 292 of the I.P.C. and was sentenced to undergo R.I. for one year and to pay a fine of Rs.1,000/- by J.M.F.C.,Sangli. In appeal preferred by the applicant, conviction was maintained but the sentence of rigorous imprisonment was reduced to six months and amount of fine was however, maintained. The conviction and sentence are challenged in the present revision application.

2. Prosecution case in brief is that one journalist had written an anonymous letter to the Collector, Sangli informing that one person named Babar used to carry out business of exhibiting blue films in

his house situated to the backside of S.T.Stand, Sangli. That letter was forwarded to the Dy.S.P.Home, Sangli. On the basis of that letter, on 22nd March, 1988 at about 11.00 p.m. , the police arranged a raid at the house of the present applicant, whose surname is Babar. At that time in one room at the first floor of the house, the present applicant and 13 other persons were present. A blue film 'Blazing Mattresses' was being exhibited on T.V. with the help of V.C.R. The said cassette, T.V.Set, V.C.R. and other material, which was found on the spot, were seized. Thirteen persons, who were accused nos.2 to 14, told the police that they had paid Rs.5/- each to the present applicant for viewing the said film but no ticket was issued to them. The applicant, who was accused no.1, also admitted before the police that he did not have any valid licence for exhibiting any films and he had not issued any tickets. After completing the formalities, P.S.I.Subhash Patil lodged F.I.R. and investigation was taken over. Charge-sheet was filed against all the 14 persons and charge under Section 292 (1) (2) (a)(b)(c) of the I.P.C. was framed against the accused nos.2 to 14. They pleaded guilty and they were sentenced to undergo S.I. till rising of Court and to pay a fine of Rs.20/- each. Separate charge was framed against the accused no.1 under Section 292(2) of the I.P.C. and under Section 3

read with Section 7 of the Cinema Regulation Act. He pleaded not guilty.

3. On behalf of the prosecution, in all 3 witnesses namely, P.W.1 Intihaj Shaikh, P.W.2 Police Constable Amarsingh Rajapur and P.W.3 Head Constable Maruti Patil were examined. The applicant/accused took a plea of alibi and examined one witness. The learned Trial Court rejected the plea of alibi and relied on the testimony of three prosecution witnesses and convicted the accused as stated above.

4. Evidence of these three witnesses clearly reveals that during the raid the present applicant/accused was found present in one of the rooms on the first floor of the house. In that room with the help of V.C.R., a blue film was being screened and exhibited. Thirteen persons, who were spectators, told the police that they were watching the film by paying Rs.5/- each towards the ticket to the accused no.1 but no ticket was issued to them. The cassette was removed from V.C.R. and it was revealed that it was made by Perina Company and title of the film was ’Blazing Mattresses’. It was duly wrapped and sealed and a label with the signatures of panchas was affixed on the same. T.V.Set, V.C.R. and 2 other cassettes were also

attached under the panchanama Exhibit 62. It appears that during the trial, the learned Magistrate, in presence of the learned Assistant Public Prosecutor, the defence counsel and the accused himself, saw the film and prepared a memorandum regarding their observations about the said film. This memorandum clearly shows that on opening the wrapper on the cassette was found duly sealed. On opening the cassette, it was found to be made by Perina Company. The title of the film was 'Blazing Mattresses'. The contents of the film undoubtedly revealed that it was obscene film depicting sexual intercourse of one man with two women one after another. There is no dispute that the cassette which was screened and seen by the learned J.M.F.C. was a blue and obscene film.

5. The learned counsel for the applicant tried to contend that the cassette was not properly sealed and there was no proof that the cassette, which was actually seen by the learned J.M.F.C., was the same, which was seized at the time of raid. I am not convinced with this contention. It is further contended that there is no reliable evidence to show that the present applicant was screening and exhibiting the blue film because there is no documentary evidence that the house where it was being shown was in possession or owned by the present

applicant/accused. After going through the oral evidence of the prosecution witnesses, I find no substance in his contention. Witnesses were not aware about the ownership and possession of the house before the raid. However, P.W.2 Amarsingh and P.W.3 Head Constable Maruti Patil clearly deposed that at the time of raid, the present applicant/accused was residing at the ground floor and he was also in occupation of the first floor and the room, where the blue film was being exhibited. The two Courts below have already considered the evidence and came to a conclusion that the present applicant/accused was in possession of the house and he was screening and exhibiting the blue film. There is nothing to show that the findings of the Courts below are illegal, perverse or wrong. Therefore, I am satisfied that the Courts below did not commit any error in holding the accused guilty for the offence punishable under Section 292(2) of the I.P.C.

6. Mr.Patil, the learned counsel for the applicant contended that the incident of this case had occurred 18 years before. At that time, the applicant was aged about 50 years and now he is aged around 68 years. According to him, no purpose will be served by sending the applicant in jail during his oldage. For the offence under Section 292, the accused is liable to be

sentenced to imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees. As stated above, the Trial Court awarded R.I. for one year and fine of Rs.1,000/-. But taking into consideration the oldage of the present applicant, the Appellate Court reduced the sentence of imprisonment to six months. The appeal was decided on 22-5-1998, i.e. at most nine years ago. He was in custody for a short period from 22nd May, 1998 to 2nd June, 1998. Taking into consideration the long period of 18 years, during which there was a hanging sword on the head of the accused, and his oldage, I find that no purpose will be served by sending him in jail now. Therefore, fine amount may be increased and imprisonment may be reduced to as already undergone.

7. For the aforesaid reasons, the revision application is partly allowed. Conviction of the accused under Section 292 of the I.P.C. is maintained. However, order to the extent of sentence stands modified as follows:

8. The applicant/accused is sentenced to undergo imprisonment as already undergone from 22nd May, 1998 to 2nd June, 1998 and to pay a fine of Rs.2,000/- and in case of default to pay fine to undergo S.I. for three

months.

(J.H.Bhatia,J.)